COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

MCCrApp & CAIS No. 19 of 2018

Edward Dudley Barrett

Appellant

vs

The Commissioner of Police

Respondent

(Bail)

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SCCrApp & CAIS No. 33 of 2018

Attorney-General

Appellant

vs

Edward Barrett

Respondent

(Bail)

Before: The Hon Mr Justice Isaacs, JA
The Hon Mrs Justice Crane-Scott, JA
The Hon Mr Justice Evans, JA (Actg)

No. 19 of 2018
Mr Wayne Munroe, QC, with Mr. Ryszard Humes and Mr Alex Morley, Counsel for Appellant
Mrs Anishka Missick, with Mr Randolph Dames, Counsel for Respondent

No. 33 of 2018
Mrs Anishka Missick, with Mr Randolph Dames, Counsel for Respondent
Mr Wayne Munroe, QC, with Mr Ryszard Humes and Mr Alex Morley, Counsel for Appellant

5 March 2018

The oral judgment of the court was delivered by Crane-Scott, JA:

We have before us the substantive hearing of the Notice of Appeal, SCCrApp & CAIS No. 33 of 2018, filed by the Crown on 14th February, 2018. The appeal is from a decision of her Ladyship Mrs. Justice Renae McKay handed down in the Supreme Court on 14th February, 2018, wherein the learned judge ordered the grant of bail pending appeal to the respondent, who, on 25th January, 2018, was convicted in the Magistrate's Court of 14 firearm and ammunition related offences contrary to the Firearms Act, Chapter 213.

By way of background, it should be said that on 26th January, 2018 (that would be the day after the appellant's conviction) the respondent filed an appeal against his conviction on several grounds.

In early February the appellant applied to the Supreme Court for bail pending appeal pursuant to section 3(2) of the Bail Act and appeared before Justice Renae McKay. At the start of the matter before Justice McKay, on 2nd February, 2018, the Crown disputed the jurisdiction of the court to entertain the application. Arguments were heard and on 5th February, 2018, in a written ruling, the learned judge ruled that she had jurisdiction to entertain the application. The Crown did not appeal that ruling, which I now call the jurisdiction ruling, and the Crown thereafter submitted to the

court's jurisdiction to hear the application for bail pending appeal, which then proceeded to a substantive hearing on 7th February, 2018 before Justice McKay.

On 14th February, 2018, the judge delivered her written ruling and granted bail pending appeal to the appellant in the sum of $20,000.00 with two sureties and imposed certain reporting conditions. The Crown then filed the Notice of Appeal, which I mentioned earlier, on 14th February against the decision of the judge to grant bail pending appeal.

Initially, the Notice of Appeal listed four grounds of appeal against the grant of bail pending appeal. The Crown withdrew Ground 2, which related to the jurisdiction ruling of 5th February, 2018, which it did not appeal and the appeal before us proceeded on the basis of Grounds 1, 3, and 4.

On Ground 1 the Crown sought to argue that the learned judge had erred by failing to give any or any sufficient weight to one of the factors mentioned in section 3(2)(b) of the Bail Act, namely, that the judge failed to give any or any sufficient weight to the nature and seriousness of the offence which the respondent had been convicted.

We found little merit in this ground, inasmuch as the Crown failed to convince us that the judge had not taken this factor into account, having regard to her clearly being

aware in her ruling that the applicant, now respondent here, had been convicted of these offences for which he had also been sentenced. Therefore, we dismiss that ground.

The next ground argued by the Crown was that the learned judge had erred when she had failed to take into consideration certain points of law which were to be regarded as exceptional circumstances. These points, which we explored during the course of the arguments, related, it seems, to the proposed grounds to be argued at the substantive appeal, which the counsel for the respondent submitted showed obvious errors by the magistrate and which established that the appeal stood a good chance of success.

The first related to section 108 of the Criminal Procedure Code and alleged failures of the magistrate to comply with his mandatory obligation to sign and date his reasons in open court. This particular issue was considered by the learned judge in her ruling and she clearly stated that she had considered the authorities which had been submitted on section 108(1) of the Criminal Procedure Code and was of the view that the applicant had a compelling case that the magistrate did not comply with the requirements of the section.

Obviously, the judge was alive to one of the matters to be considered on an application for bail pending appeal, which is the prospects of success of the appeal and the

learned judge felt in her view the applicant had a compelling case that the magistrate did not comply with the obligation in the section.

Thereafter in her ruling, the judge turned to the second point raised by counsel for the respondent before her in the court below, which was an issue regarding the treatment by the magistrate of the issue of the accused's good character during the course of the trial. During the arguments the judge was alive to cases such as the Birbal cases, which are decisions of this court, and quite apart from the 108 point, the court felt that this particular ground was even more compelling on the issue of the likelihood of success of the respondent's appeal. She stated in paragraph 32, with which we agree and can find no fault, that the respondent has an even more compelling case on failure of the magistrate's reasons to demonstrate that he had considered the evidence of the respondent's previous good character and its relevance to his credibility and propensity to commit the offences. These matters were explored in argument before us and we are satisfied that, as the judge found, that this particular ground has good prospects of success. I will go no further on that.

With respect to the third point raised by counsel, Mr. Munroe, before the learned judge and again before us, the third point was there were inconsistent or unequal or

conflicting verdicts. We make no comment on that inasmuch as we are satisfied that the prospects of success of the appeal are demonstrated at least in the two grounds earlier mentioned. We found that there was little merit, having explored these matters fully, with both counsel in Ground 3.

Then we turn, finally, to the final ground on the Crown's appeal, namely that the learned judge was unreasonable in arriving at her decision to grant bail pending appeal.

We find once again no merit in this ground, inasmuch as the learned judge set out in a fully reasoned decision the reasons why she came to her decision to grant bail pending appeal and we find no unreasonableness or no error of principle in the ruling.

We therefore dismiss the grounds of appeal in SCCrApp & CAIS No. 33 of 2018 and affirm the decision of the learned judge.

Dated this 5th day of March, 2018

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CRANE-SCOTT, JA

ISAACS JA:

The decision of Madam Justice McKay stands as does the grant of the bail.

On the withdrawal of the application for bail in

MCCrApp & CAIS No. 19 of 2018, that application stands dismissed.

The substantive appeal in MCCrApp & CAIS No. 19 of 2018 is adjourned to Monday, 7th May, 2018.

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ISAACS, JA

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